IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2005

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE S. ASHOK KUMAR

WRIT PETITION NO.17263 OF 2004
and
WPMP.No.35852 OF 2004

R. Krisnaswamy
S/o. Ramaswamy Thevar .. Petitioner

Vs.

1. The Director General of Police,
Chennai 4.

2. The Registrar,
Tamil Nadu Administrative Tribunal,
Chennai Bench,
Chennai 600 104. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus to call for the records of the 1st Respondent in connection with the impugned order passed in RC.No.174966/Conf.3(i)/97, dt.25.1.00 and confirmed by the order dated 12.5.2004 in O.A.No.1846/2000, on the file of Tamil Nadu Administrative Tribunal and quash the same.

For Petitioners : Mr.K. Venkataramani

For Respondent-1 : Mr.S. Gomathinayagam
Special Govt. Pleader

- - -

WEB COPY

J U D G M E N T

P.K. MISRA, J

The facts giving rise to the present writ petition are as follows :-

The petitioner entered service as Police Constable Grade II and was subsequently promoted as Police Constable Grade I in the year 1992. While he was so functioning as Grade I Police

https://hcservices.ecourts.gov.in/hcservices/

Constable, on the basis of a complaint filed by one Murugesan regarding assault by the present petitioner, a case was registered by the Inspector of Police and the matter was referred to the Revenue Divisional Officer. On the basis of the findings of the R.D.O., departmental enquiry was initiated against the petitioner under Rule 3(b) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules. The petitioner denied the charges. The Assistant Commissioner of Police, Flower Bazaar, was appointed as the Enquiry Officer. The Enquiry Officer found the delinquency of the petitioner and submitted a report to the disciplinary authority. The disciplinary authority, namely, the Deputy Commissioner of Police, accepting the findings of the enquiry officer awarded the punishment of reduction in the time scale of pay by one stage for a period of one year without cumulative effect as per order dated 10.8.1999. The petitioner claims that the punishment was reviewed by the Commissioner of Police who agreeing with the findings of the disciplinary authority and the enquiry officer, confirmed the order of punishment. Thereafter, the Director General of Police, in exercise of his suo motu power of review, came to the conclusion that the punishment awarded was grossly inadequate compared to the seriousness of charge of assault and awarded the punishment of compulsory retirement with immediate effect by order dated 25.1.2000. The said order was communicated on 10.2.2000. Thereafter the petitioner filed O.A.No.1846 of 2000 before the Tamil Nadu Administrative Tribunal. At the time of entertaining the Original Application, an interim order of stay was passed and by virtue of such order, the petitioner was reinstated in service and continued to serve in the said capacity. Ultimately, the Original Application was heard on merits and dismissed by order dated 12.5.2004. This order of the Tribunal is under challenge in the present writ petition.

2. While entertaining the writ petition, initially, an interim order of stay was passed and subsequently such stay has been vacated.

3. Learned counsel for the petitioner has raised two contentions. The first contention is to the effect that the order of punishment passed by the disciplinary authority was reviewed by the higher authority and on such review, the order of punishment was found to be proper and therefore, there was no scope for a second review in view of the provisions contained in Rule 15-A(4) of the TNPSS (D&A) Rules. The alternative contention of the petitioner is to the effect that even assuming that second review is permissible in law, the Reviewing Authority has arbitrarily reviewed the order of punishment and has imposed the punishment of compulsory retirement, which is grossly disproportionate to the nature of delinquency. In this context, it has been submitted by the learned counsel for the petitioner that if the original punishment of stoppage of one increment was found to be

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

inadequate, any other suitable punishment, short of compulsory retirement, could have been imposed.

4. Learned counsel appearing for the State has submitted that the question now raised by the petitioner regarding inapplicability of Rule 15-A(4) of TNPSS (D&A) Rules had not been raised before the Tribunal as such and cannot be permitted to be raised. It is also submitted that at any rate the provisions contained in Rule 15-A(4) do not de-bar higher authorities from invoking the review power. It has been submitted by him that the conclusion of the enquiry officer and the disciplinary authority that the petitioner had caused a grievous hurt to a private citizen without any justifiable reason, calls for proper disciplinary action and the order passed by the Director General of Police cannot be said to be arbitrary. He has submitted that all the relevant aspects had been considered by the Tribunal and the High Court cannot sit as an appellate authority over the order passed by the Tribunal and at any rate the punishment imposed also cannot be said to be grossly disproportionate so as to warrant any interference.

5. It is of course true that a perusal of the order of the Tribunal does not reflect any submission relating to the scope of Rule 15-A(4) of TNPSS (D&A) Rules. However, we find that a specific ground had been taken by the petitioner as ground (a) in the Original Application filed before the Tribunal and since the question raised is more or less a question of law depending upon Rule 15-A, we feel inclined to consider such aspect.

6. The provisions contained in Rule 15-A are as follows :-

> "15-A(1) Notwithstanding anything contained in these rules--
>
> (i) the State Government; or
>
> (ii) the Head of the Department directly under the State Government in the case of a Government Servant in a department or office, under the control of such Head of the Department; or
>
> (iii) the appellate authority;
>
> within six months from the date of the order proposed to be reviewed; or
>
> (iv) any other authority, specified in this behalf by the State Government by a general or special order, and within such time as may be prescribed in such general or special order may, at any time, either on their or its own motion or otherwise, call for the records of any inquiry and review any order made under these rules, after consultation with the Tamil Nadu Public Service Commission, where such consultation if necessary and may, --

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set-aside the 'penalty' imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority, directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit:

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the Government servant concerned has been given a reasonable opportunity of making representation against the penalty proposed. Where it is proposed to impose any of the penalties specified in clauses (d), (e) (3) (h) (i) and (j) of Rule 2 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in sub-rule (b) of Rule 3 and after giving a reasonable opportunity to the Government servant concerned of showing cause against the penalty proposed on the evidence adduced during the inquiry and except after consultation with the Tamil Nadu Public Service Commission, where such a consultation is necessary :

Provided further that no power of review shall be exercised by the Head of the Department, unless--

(i) the authority which made the order in appeal; or

(ii) the authority to which an appeal would be, where no appeal has been preferred, is subordinate to him.

(2) No proceeding for review shall be commenced until after --

(i) the expiry of the period of limitation for an appeal; or

(ii) the disposal of the appeal, where any such appeal has been preferred;

(3) An application for review shall be dealt with in the same manner as if it were an appeal under these rules;

(4) No application for review shall be preferred more than once in respect of the same order:

Provided that members of the constabulary (Police Constables and Head Constables) shall be eligible to

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

make one representation to the Government against orders of dismissal or removal from service after exhausting the right of appeal;

Provided further that no application for review shall be entertained, if it has not been made within a period of six months from the date of receipt of the order on which such application for review is prescribed."

7. The contention of the petitioner is to the effect that power of review has been given in alternative to various authorities and once any such power of review is exercised by such authority, the other authorities are precluded from further reviewing the matter. Even though such a contention prima facie appears to be attractive, in our opinion, such contention is unacceptable.

8. An analysis of the aforesaid provision makes it clear that the power of review has been given to the State Government under Rule 15(1)(i) or the Head of the Department or the Appellate Authority or any other authority specified in this behalf by the State Government. So far as the appellate authority is concerned, as contemplated under Rule 15-A(1)(iii) such power is to be exercised within six months from the date of order proposed to be reviewed. So far as any other specified authority contemplated under Rule 15-A(1)(iv) is concerned, such power is to be exercised within time as may be prescribed, and so far as the State Government or Head of the Department is concerned, such power can be exercised at any time. This power of review can be exercised by the concerned authority on its own motion, i.e., suo motu or otherwise. In other words, such power of review can also be exercised on the basis of an application, which is contemplated in Rule 15-A(3) . If the power is exercised obviously suo motu, there is no filing of any application. Under Rule 15-A(4), no application for review shall be preferred more than once in respect of the same order. Review can be made in respect of any order made under these Rules. So far as the Head of the Department is concerned, it is contemplated that he shall not have the power of review unless the appellate authority is subordinate to him. A careful analysis makes it clear that so far as suo motu power is concerned, there is no prohibition for the higher authority to issue suo motu review proceedings. The only embargo is that if the review is based on any application, such applicant cannot have a further right of filing further application for review.

9. For clarification, we may refer to the provisions contained in Sections 397 and 401 Cr.P.C. giving the power of revision to the Sessions Judge as well as the High Court. There

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

is a specific prohibition in Section 397 (3) indicating that if a power of revision is exercised by a particular revisional authority and the order is confirmed, no further revision would be maintainable. However, there is no such indication in the present Rule 15. On the other hand, a careful reading of Rule 15 indicates that if power of review is exercised by an authority, the higher authority is not precluded from exercising suo motu power of review. If the contention of the learned counsel for the petitioner would be accepted, the jurisdiction of the higher authorities would be unduly circumscribed and any inferior authority contemplated under Rule 15-A may foreclose the discretionary power of review of a higher authority by exercising such review power himself. We are therefore unable to accept such contention.

10. Moreover, a perusal of the file does not indicate regarding any categorical order of the Commissioner in the purported exercise of power under Rule 15-A. It merely seems that the file had passed through the Commissioner in a routine administrative manner and the Commissioner of Police seems to have agreed with the conclusion of the enquiry officer and the disciplinary authority and thereafter, the file was forwarded to the higher authority, namely the Director General of Police. In other words, mere administrative notes have been furnished and by no stretch of imagination it can be said that an order has been passed confirming the order of punishment in exercise of power under Rule 15-A of TNPSS Rules.

11. Learned counsel for the petitioner then submitted that at any rate the petitioner, who was a police constable, was trying to discharge his duty and had assaulted as the person was interfering with the discharge of duty, and therefore, the order of compulsory retirement is grossly disproportionate.

12. In (1995) 6 SCC 749 (B.C. CHATURVEDI v. UNION OF INDIA), it was observed :

> "18. ... The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the High Court/Tribunal,it would appropriately mould the relief, either directing the disciplinary authority/Appellate Authority to reconsider the penalty imposed, or to shorten the litigation, it may itself in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

13. In (1997) 7 SCC 463 (UNION OF INDIA v. G. GANAYUTHAM), it was observed :-

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

"31. The current position of proportionality in administrative law in England and India can be summarised as follows :-

(1) To judge the validity of any administrative order or statutory discretion,normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury test.

(2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational -in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU principles.

(3)(a) As per Bugdaycay, Brind and Smith as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3)(b) If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4)(a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of 'proportionality' and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14."

14. In (1987) 4 SCC 611 (RANJIT THAKUR v. UNION OF INDIA), the Supreme Court had interfered with the punishment imposed after coming to the conclusion that the punishment was in outrageous defiance of logic and was shocking, and perverse and irrational.

15. In (1997) 3 SCC 72 (INDIAN OIL CORPORATION LTD v. ASHOK KUMAR ARORA), the Supreme Court observed that the Court should not intervene with the punishment unless the punishment is wholly disproportionate.

16. In the present case, the contention of the petitioner is to the effect that the punishment of compulsory retirement is grossly disproportionate. Learned counsel for the petitioner has submitted that while the petitioner was discharging his duty, a third person had intervened, resulting in the unfortunate incident, and therefore, any other punishment like stoppage of increment with cumulative effect could have meet the ends of justice.

17. Before the disciplinary authority, the petitioner had given an explanation to the effect that the third person had abused the petitioner in obscene language and caught hold of the collar of the petitioner and when the petitioner was trying to free himself, the third person had fallen down and sustained the injuries. This explanation does not appear to have been accepted by the disciplinary authority and it has been found that in fact the petitioner had assaulted that person. In fact a bleeding injury on the head was sustained and the person had been hospitalised for few days. It is obvious that the story of the petitioner that the person had fallen down while the petitioner was trying to free himself and sustained the injury as such having not been accepted by the disciplinary authority or any of the higher authority or the Tribunal, no credence can be given to such story at this stage. As a matter of fact, the finding of the disciplinary authority that the petitioner had assaulted the third person was not challenged by the petitioner by filing any appeal. In view of the factual conclusion that the petitioner assaulted

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

and the person had sustained a bleeding injury on the head, the submission of the petitioner regarding the proportionality of the punishment is required to be considered.

18. May be, if we would have been called upon to examine the matter on a clean slate, that is to say, as an "original authority", we would have been in a better position to consider as to whether any lesser punishment would have been more appropriate. In the present case, the Head of the Department had already examined the matter and has come to a conclusion that the petitioner having assaulted a citizen, punishment of stoppage of one increment without cumulative effect was very lenient and such punishment was enhanced to one of compulsory retirement. Such conclusion of the Administrative Head has received judicial approval at the hands of the Administrative Tribunal, which has observed that the punishment does not appear to be disproportionate.

19. While exercising jurisdiction under Article 226 of the Constitution, the High Court is expected to correct errors of law committed by the lower Tribunal. The High Court is required to find out regarding the validity of the decision making process rather than sit as an appellate authority over the decision of the lower authority. As already indicated, the decision of the Administrative Head, which obviously was better suited to find out the appropriate punishment, has also received the judicial approval at the hands of the Tribunal. We do not find any error in the approach made by the Director General of Police or any error in the order passed by the Tribunal so as to substitute our own views in the matter.

20. Even otherwise, this punishment cannot be characterised as grossly disproportionate to the nature of the delinquency. It is no doubt true that onerous duty has been cast on the police to maintain law and order in the Society and while discharging the duty the police may be required, nay, forced to use force. It is also true that the police personnels, particularly the lower level of the Department face the ire of the public and at times of the superior officers as well, but these aspects cannot be used as excuse for the police officials including at the constable level to severely assault a person causing grievous injury on the head. It may be that intervention of the third person might have enraged the constable, but being a public servant the constable was required to act within his limits. Even though there may be occasions when the police is required to use the minimum but requisite force at the time of causing arrest or even while preventing a criminal from escaping, in the present case, we do not find any justification for the act committed by the petitioner. If such an act is condoned, it would give a wrong signal to the police to behave in unwarranted

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

fashion. Moreover, since the Head of the Department has considered the matter and has thought that compulsory retirement would be proper, it would be impudent on our part to interfere with such punishment. The tenor of several decisions cited at the bar, particularly by the Special Government Pleader, many of which have been noticed earlier, is clearly against the contention raised by the learned counsel for the petitioner.

21. Even the punishment of compulsory retirement has the effect of protecting the pensionary and retirement benefit of the petitioner. By no stretch of imagination the punishment can be characterised as grossly disproportionate to the nature of the delinquency. We therefore express our inability to interfere with the order passed by the Director General of Police as confirmed by the Administrative Tribunal.

22. The Tribunal while dismissing the O.A., had observed that the petitioner is deemed to have been retired on the date on which he is relieved from the service. It appears that after the petitioner was relieved from service, he was reinstated by virtue of the interim order passed by the Tribunal and was continuing as such while the Tribunal passed the order. Subsequently, he had not been relieved by the Department and he was relieved only after the interim order of stay passed by the High Court was subsequently vacated. To avoid any confusion in the matter, we observe that the petitioner shall be deemed to have been in service till he was relieved pursuant to the vacating of the stay order passed by the High Court. However, he would not be entitled to any further amount towards salary. His pensionary benefits shall be calculated and paid on the footing that he had continued till he was compulsorily retired with effect from the date on which he was actually relieved by the Department after the stay order was vacated by the High Court.

23. Subject to the aforesaid clarification, we do not find any merit in the writ petition, which is accordingly dismissed. No costs. Consequently, WPMP.No.35852 of 2004 is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

dpk

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

To

1. The Director General of Police, Chennai 4.

2. The Registrar,
   Tamil Nadu Administrative Tribunal,
   Chennai Bench, Chennai 600 104.

+ 1 CC to Mr.K.Venkataramani, Advocate SR NO 7604

+ 1 CC to Govt. Pleader SR NO 7133

WP.NO.17263 OF 2004
16-02-2005

smk(vo)
gp/28.2.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/